

## REMARKS

Reconsideration of this Application as amended is respectfully requested. This AMENDMENT AND REPLY is filed in response to the Office Action made Final mailed March 5, 2007 (the "present Office Action"). Claims 1-20 are pending in the application with Claims 1, 15, and 17 being independent claims. Based on these Remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

### *Rejections under 35 U.S. C. § 102(e)*

#### **Claims 1-3, 6, 8-11,13, 15-18, and 20**

Pursuant to the Examiner's Interview of July 14, 2006 which discussed the application of U.S. Patent No. 6,477,743 to Gross et al. (Gross) to the present invention, it appeared that independent Claims 1 and 15 would be allowable, subject to an updated search by the Examiner, as amended to define the stem as separate from the closure cap.

The present Office Action does not raise new art for the rejection of Claims 1-3, 6, 8-11,13, 15-18, and 20 under 35 U.S.C. § 102(e) as being as being anticipated by U.S. Patent No. 6,477,743 to Gross. The subject Office Action notes in part that:

"Applicant's arguments filed November 14, 2006 have been fully considered but they are not persuasive. As stated in the above rejection there are three components in the device of Gross, a cap, a spout and a stem. There is still no requirement in the claims for individually made components as the applicant's (sic) suggests in the remarks. The stem in the device of Gross is a separate member that engages the cap..."

By the forgoing amendments, Applicants have amended independent Claim 1, 15, and 17 to provide that the cap and stem are monolithic component members separate from each other. Support for the term "monolithic" relative the cap and stem in the amended independent claims can be found at page 7, at the last sentence of paragraph 0041.

U.S. Patent No. 6,477,743 to Gross et al fails to teach or suggest the closure of the present invention which includes a *monolithic* cap, a spout, and a *separate monolithic* stem, as is called for by amended independent Claim 1, 15, and 17. Rather in Gross the cap "closure body 30" is integral with the stem element of "chimney / conduit 70" by virtue of an annular "flexible wall 80" that extends around the full periphery of the "chimney / conduit 70".

Contrary to Applicant's currently amended independent Claims 1, 15, and 17 which now call for the cap and stem to be monolithic component members separate from each other, Gross discloses a "closure system 20 [that] includes two basic components, (1) a body 30, and (2) a spout 40." *See* Gross, col. 5, lines 1-4. The Gross closure includes a spout 40 and closure body 30 having a base 50 and a reciprocable chimney / conduit 70 joined by a flexible wall 80. *See* Gross, col. 2, lines 49-54 and FIGs. 3-4. The conduit is thus *integrally* formed with the body. *See* Gross, FIGs. 3-4.

Specifically, Gross at Column 5, lines 51 to 60 teaches:

**"As shown in FIG. 5, the closure body 30 includes a chimney or conduit 70 connected to the closure body base 50 by means of an intermediate, generally annular, flexible wall 80. The wall 80 extends around the periphery of the conduit 70 so as to provide a completely sealed region between the 55 closure body base 50 and the exterior of the lower portion of the conduit 70. The flexible wall 80 accommodates vertical movement or reciprocation of the conduit 70 relative to the closure body base 50 (and relative to the container 22 when the**

closure body base **50** is mounted on the container 22). {bold print emphasis added}

At Column 7 lines 29 to 67 Gross also teaches that the flexible wall 80 which integrally joins the "chimney / conduit 70" to the cap "body 30" remains integral with the cap base 30 and chimney / conduit 70 during the open and closed positions of its dispensing closure system. As the conduit 70 moves downwardly from the elevated closed position illustrated at Fig. 3, the annular flexible wall 80 deforms or deflects as necessary to accommodate the downward movement which ultimately "terminates" when the flexible wall 80 reaches the limit of its downwardly, deformed orientation shown in Fig. 4.

Gross at Column 7, lines 45 to 67 teaches:

"The downward movement of the conduit 70 is terminated when the flexible wall **80** reaches the limit of its downwardly, deformed orientation as shown in FIG. 4. An attempt by the user to rotate the spout **40** any further in an opening direction (counterclockwise direction in FIG. 1) to move the conduit 70 further downwardly encounters the resistance or restraint imposed upon the conduit **70** by the deformed flexible wall **80**, and the user finds it impossible to continue to rotate the spout **40** in the opening direction. This provides a tactile indication to the user that the liner **60** has been properly pierced and/or that the closure 20 is in a fully open condition as shown in FIG. 4.

When the closure **20** is in the full open condition as shown in FIG. 4, the user can tip or invert the package to facilitate the dispensing of fluent product under the influence of gravity. If the container 22 has a flexible wall or walls, the container 22 can be squeezed to further assist in dispensing the product.

After the desired amount of product has been dispensed, the package can be turned back to its upright orientation, and the user can rotate the spout **40** in a

clockwise direction (as viewed in FIG. 1) to drive the conduit 70 upwardly to the fully closed position as shown in FIG. 3."

**The cap body 30 of Gross is integral with the conduit 70 by virtue of the annular flexible wall 80 about the entire periphery of the conduit. The opening and closing of the Gross dispensing cap relative to accommodating "the desired amount of product" depends upon maintaining this integral bond.**

Moreover, Applicants respectfully submit that Gross fails to teach or suggest a monolithic stem, separate from a monolithic cap, that engages a stem guide of the cap. The Gross conduit 70 cannot "engage" its body 30 because Gross's conduit 70 is casted as a single piece formed with Gross's body 30: conduit 70 and body 30 are merely portions of the same element. Gross's conduit 70 engages body 30 no more than the sides of a cube "engage" the top and bottom of a cube.

***Rejections under 35 U.S. C. § 103(a)***

**Claims 1-5 and 15-26 and 28-37**

The present Office Action has rejected Claims 7, 12, and 19 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,477,743 to Gross et al. in view of U.S. Patent No. 3,207,375 to Bereziat et al. (Bereziat). Applicants respectfully traverse the rejections of claims under 35 U.S.C., § 103(a) as the same may be attempted to be applied to Applicants' currently amended independent Claims 1, 15, and 17 on the same basis advanced above with respect to the Gross reference. It is noted that Claims 7, 12, and 19 are dependent claims directly or indirectly dependent on one of the foregoing amended independent Claims 1, 15, and 17.

**Allowable Subject Matter**

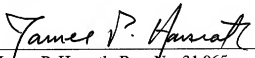
It is noted that Applicants' Claims 4, 5, and 14 were objected to in the present Office Action as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all limitations of the base claim and any intervening claims.

**Conclusion.**

For at least the foregoing reasons, Applicants respectfully submit that the Gross and Bereziat patents, taken individually or combined with each other do not anticipate or render obvious Applicants' independent Claims 1, 15, or 17 as now amended. Hence all remaining pending claims are believed allowable due to their direct or indirect dependency on such independent claims.

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. It is submitted that the application is now in condition for allowance and an early and favorable action to that end is requested. If any questions or issues remain, the resolution of which the Examiner feels would be advanced by a telephonic conference with Applicants' attorney, he is invited to contact the undersigned at the telephone number noted below.

Respectfully submitted,

  
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